



Discrimination Complaint Processing Update

From the Deputy Assistant Secretary
for Resolution Management
Office of Resolution Management
Department of Veterans Affairs

From the Deputy Assistant Secretary

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As we come to the close of 2003 and look forward to 2004, I want to once again highlight the importance of creating environments that, in essence, prevent complaints because they are Employer-of-Choice environments. ORM can assist you through our Root Cause analysis and Organizational Climate Assessment Program (OCAP). Equally as important is using Alternative Dispute Resolution (ADR) to resolve disputes as early as possible. Resolution by the disputants is almost always the best solution.

Cari M. Dominguez, Chair, Equal Employment Opportunity Commission, talks about the overburdened equal employment opportunity (EEO) process in the Federal government and the need to reform this process in “The Need for Federal Sector Reform” on page three. Complaint prevention and ADR through mediation are two of the topics discussed.

When disputes do occur mediation is perhaps your most effective tool. Here are some of the benefits of mediation:

- Less costly than formal processing
- Faster
- Useful for all disputes
- Convenient
- Confidential
- Less Formal
- Focuses on issues not people
- Risk free
- Facilitates healing
- Gets to root causes
- Clarifies interest
- Builds basis for future relationships
- Ensures all parties are heard
- Encourages communication
- Non-Adversarial
- Disputants maintain control

Issues are addressed early in the mediation process, the involved parties are the authors of the solution, it opens communication channels, and helps to improve morale.

You will be hearing more about our prevention and ADR program initiatives during the coming months.

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James S. Jones

Program Highlights

The Need For Federal Sector Reform

by Cari M. Dominguez, Chair, EEOC

In October 1989, a 59-year-old African American mechanic working at a federal facility was demoted from his position as foreman. He filed a complaint with the federal agency where he was employed alleging the demotion was the result of discrimination based on his race and age. The case moved slowly through the administrative complaint and appellate processes until, in February 2000, eleven years later, a final appellate decision of the Equal Employment Opportunity Commission (EEOC) affirmed an earlier administrative judge's finding of discrimination. The EEOC ordered the mechanic promoted back to the foreman position with back pay and other damages. Unfortunately, the mechanic had died two years earlier.

The federal government employs more than two million women and men across the nation and around the world. These federal employees have pledged to serve their country with diligence, respect, and commitment. In return, they deserve no less from their government. However, more than 20,000 complaints of discrimination are filed annually by federal workers nationwide. The federal complaint processing system is so overburdened that many of these complaints stagnate for years before they are eventually resolved.

The principle behind equal employment opportunity (EEO) is that every individual has the right to compete for a job, go about his or her work, and advance in his or her career free of discriminatory barriers. Ideally, race, gender, national origin, religion, disability and age should have no place in these matters. However, when employees believe violations of the law have occurred, they should be able to obtain prompt corrective action.

Discrimination is devastating to employees, and the system meant to protect their civil rights should not compound their problems. Stakeholders representing both complainants and federal agencies have voiced concerns that the federal sector process is much too slow, far too expensive, and unnecessarily intricate. While previous administrations have tried to improve the system through regulatory changes, clearly, more must be done.

More than a year ago, I initiated an open and constructive dialogue with the federal sector community to find viable solutions to these issues. In addition to numerous personal meetings with federal sector stakeholders, employees, managers, union representatives, and the civil rights and legal communities, the Commission held a public meeting on November 12, 2002, to examine the problems with the federal complaint processing system and the best ways to resolve them.

A brief explanation of the current complaint processing system may be helpful in understanding its complexities. A federal employee or applicant for employment

who believes s/he has been a victim of employment discrimination must first seek EEO counseling from the agency responsible for the actions in dispute. If the matter is not resolved in counseling, a formal complaint of discrimination can be filed with the agency, which is then responsible for investigating the claims raised in the complaint. The investigator may be an employee of the responsible agency or its contractor. Once the investigation is completed, the complainant has the option of either asking the agency to issue a final decision based on the evidence gathered during the investigation, or requesting a hearing before an EEOC administrative judge. If a hearing is requested, the agency must later issue a final decision in which it indicates whether or not it will fully implement the decision of the EEOC administrative judge. If the agency decides not to fully implement the administrative judge's decision it must also appeal that decision to EEOC's Office of Federal Operations (OFO). The complainant, on the other hand, may appeal any final agency decision to EEOC's OFO, regardless of whether a hearing was requested or not.

One inherent problem is the length of time it takes to investigate and resolve a complaint. The system is so overburdened that many complaints stagnate for years before they are resolved. Federal agencies on average take approximately 267 days to investigate complaints, well more than the 180-days required by regulation for complaints that have not been consolidated with other complaints or had amendments to the issues raised. The average processing time for issuing final agency decisions without a hearing is 326 days. When a hearing is involved resolution may take even longer. We need a system that requires greater time management accountability and transparency, where both those agencies that abide by the established time frames and those who continue to disregard those time frames receive public recognition.

Another problem is the misuse of the EEO complaint process. Because of its accessibility to employees, the system is often used as a vehicle to address many other types of workplace disputes having nothing to do with discrimination. The processing of each case is costly in time, money, and human resources. The taxpayers' bill for investigating a single complaint can range from \$5,000 to more than \$28,000. Giving each case the same emphasis regardless of whether discrimination is really at issue has caused the agency to direct scarce resources away from the critical task of uncovering discrimination, remedying its victims, and developing mechanisms to prevent further discrimination in the future.

A more flexible system is critical to devoting sufficient resources to those cases where it is likely that discrimination has actually occurred and better serving those who use the system. Early assessment and processing using a variety of options is important to develop a more strategic approach. Strong alternative dispute resolution (ADR) programs, for example, will provide early resolution to all types of workplace disputes so cases that are not really about discrimination do not siphon resources in the EEO complaint process. ADR not only settles the immediate complaint, but frequently may also resolve the loss in productivity resulting from the disruption created by unresolved workplace disputes. At EEOC, we are now in the process of considering options for a more efficient, responsive, and fair complaint processing system. As we discuss various options, I am grateful to have the opportunity to learn from those who have navigated the process firsthand. We plan to continue to partner with our

stakeholders as we propose significant reforms to the process. We will also continue to receive input from all involved through the formal rulemaking process. Together, we will bring significant improvements to the federal complaint processing system to the benefit of all federal employees. ■

Alternative Dispute Resolution (ADR) Mediation Awareness Training

The Department of Veterans Affairs is undertaking several initiatives to provide information and training to employees about Alternative Dispute Resolution (ADR). Many employees and managers do not fully understand what ADR is and, therefore, tend to not select it as a way to resolve disputes. One of the goals of VA's Strategic Plan 2003-2008 is to train 80 percent of employees on ADR techniques, with a focus on mediation, during fiscal year 2004.

To help employees and managers better understand mediation, the Office of Resolution Management (ORM) will broadcast "The Mediation Zone," an ADR awareness presentation in January 2004 (date to be announced). The 31-minute web-cast, featuring video and audio streaming, demonstrates and explains mediation. After viewing the video, employees will be asked to complete a ten question web-based ADR survey that takes approximately 5 minutes to complete. The survey results will be analyzed to determine if additional training on mediation is needed at VA facilities.

Employees and managers can access the video and survey through their desktop computers at <http://vawww.va.gov/lrc/adr/survey.asp>.

Facility directors are encouraged to provide computer accessibility to employees without desktop computers to view the video and complete the survey. VA employees are encouraged to view "The Mediation Zone" web-cast and complete the ADR survey. If you have any questions or comments, please contact the ADR Coordinator at your facility.

For more information, contact ORM ADR Program Co-Managers R. LaMont Johnson at (202) 501-2925 or MaryEllen Garcia at (650) 614-9843. ■

ORM FY 2003 Facts and Figures

- We processed **4,057** counseling events; **82%** took place within 30 days.
- Average counseling time was **28** days for cases that did not go through ADR. (The EEOC standard is 30 days.)
- We were able to resolve **45%** of the cases during the informal stage.
- Of the **1,564** investigations conducted during the year, we completed **401** within the EEOC standard of 180 days; **1,059** investigations were completed within 181 to 360 days; **104** were completed in more than 361 days.
- Our average processing time for completing investigations was **232** days. Our goal for FY 2004 is to average 180 days or less.
- The number of employees who chose Alternative Dispute Resolution (ADR) as a method to resolve disputes increased by **29%** in FY 2003 as compared to FY 2002. The number of managers agreeing to participate in ADR decreased by **27%** during the same period. ■

Discrimination Complaint Processing Update is a quarterly publication of the Office of Resolution Management. Contact Terry Washington, External Affairs Program, by e-mail or by calling (202) 501-2800 concerning the contents of this newsletter. Additional information on ORM services and programs is available at <http://www.va.gov/orm>